

Cote, D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Application of

THE CROMWELL GROUP, INC. AND
AFFILIATES, ET AL. (PACIFIC EMPIRE
RADIO CORPORATION)

In the Matter of the Application of

HICKS BROADCASTING OF INDIANA, LLC.,
ET AL. (PACIFIC EMPIRE RADIO
CORPORATION)

Related to

UNITED STATES OF AMERICA,
Plaintiff,

v.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,
Defendant.

SEARCHED
INDEXED
SERIALIZED
FILED
ELECTRONICALLY SERIALIZED
JUN 13 2013
DATE FILED: 6/13/13

10 CV 5210 (DLC)(MHD)

09 CV 7759 (DLC)

41 CV 1395 (DLC)

CONSENT JUDGMENT

WHEREAS, for periods commencing January 1, 2001 this Court issued its Final Order in the above-captioned *Hicks Broadcasting of Indiana, LLC, et al.* proceeding on October 14, 2004 approving the ASCAP 2004 Radio Station License Agreement ("2004 License"), covering the period January 1, 2001 through December 31, 2009 (the "2004 Final Order"), and a Final Order in the above-captioned *The Cromwell Group, Inc. and Affiliates, et al.* proceeding on January 27, 2012, approving the ASCAP 2010 Radio Station License Agreement (the "2010 License"), covering the period January 1, 2010 through December 31, 2016, and provided that "Bound Stations" shall be deemed

licensed and shall pay license fees in accordance with the provisions of the 2010 License (the "2012 Final Order"); and

WHEREAS, pursuant to Paragraph 7 of the 2004 Final Order and Paragraph 6 of the 2012 Final Order, this Court retained continuing jurisdiction for the purpose of enforcing the 2004 Final Order, the 2012 Final Order, and "the terms, conditions and obligations" of the 2004 License and the 2010 License; and

WHEREAS, Pacific Empire Radio Corporation ("Pacific Empire") is the Federal Communications Commission (F.C.C.) licensee of radio stations KSEL-AM and KMGI-FM, located in Pocatello, Idaho; KATW-FM, located in Lewiston, Idaho; KQZB-FM, located in Troy, Idaho; KBKR-AM and KKBC-FM, located in Baker, Oregon; KLBM-AM and KUBQ-FM, located in La Grande, Oregon; KRJT-FM, located in Elgin, Oregon; KCLK-AM, located in Asotin, Washington; and KCLK-FM and KVAB-FM, located in Clarkston, Washington (collectively, the "Stations"); and

WHEREAS, the Stations are "Bound Stations" within the meaning of both the 2004 Final Order and the 2012 Final Order; and

WHEREAS, Pacific Empire executed a 2004 License and a 2010 License for the Stations; and

WHEREAS, as of the date of signature of this Consent Judgment, Pacific Empire owes ASCAP a total of \$218,005.38, representing unpaid license fees and late payment charges pursuant to the Stations' ASCAP license agreements for periods May 31, 2013; and

WHEREAS, ASCAP and Pacific Empire agree to the entry of this Consent Judgment;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment is hereby entered in favor of ASCAP and against Pacific Empire Radio Corporation in the amount of \$218,005.38, representing license fees and late payment charges for the Stations through May 31, 2013, with interest to accrue on any balance of the Judgment Amount from the date of entry of this Consent Judgment at the rate of nine percent (9%) per annum (the "Judgment Amount").
2. Contemporaneously with the signing of this Consent Judgment by Pacific Empire, Pacific Empire shall remit to ASCAP \$32,700.80 by certified, bank or cashier's check payable to ASCAP, which will be applied to the Judgment Amount. The remainder of the Judgment Amount will be paid by Pacific Empire pursuant to the payment terms contained in the Payment Schedule. (*See Ex. A, the Payment Schedule.*) Provided that Pacific Empire has complied with all of its payment obligations as set forth in the Payment Schedule, as of August 1, 2017, the then-remaining balance of the Settlement Amount shall be reduced by the sum of \$30,427.92. In the event Pacific Empire has not complied with all of its payment obligations as set forth in the Payment Schedule, ASCAP shall be entitled to all accrued interest.
3. The Parties agree that the Judgment Amount represents a full and final settlement of all license fees and late payment charges due and owing to ASCAP for the periods through May 31, 2013, and shall not be subject to adjustment pursuant to Paragraphs 4 and 5 of the 2010 License.
4. In addition to the payments provided for in the Payment Schedule, Pacific Empire will report and pay in full and on a timely basis the Stations' monthly license fees, as determined under the 2010 License (e.g., the Stations' first monthly license fees

due to ASCAP under this paragraph are for the month of June 2013, which are due on or before June 30, 2013).

5. If Pacific Empire fails to comply with the terms of this Consent Judgment or the Stations' ASCAP license agreements, ASCAP shall give written notice of such default. Pacific Empire's failure to cure such default within seven (7) calendar days from the date of ASCAP's notice shall entitle ASCAP to immediately and without further notice seek execution on this Consent Judgment and collect any balance due and owing to ASCAP. Notwithstanding any default by Pacific Empire, ASCAP shall be permitted at all times to take any reasonable and necessary measures to perfect and maintain its rights and any security interests that might arise as a result of entry of this Consent Judgment.

6. Pacific Empire hereby waives all further briefings or hearings in connection with the entry of this Consent Judgment, and further agrees to waive all rights of appeal related to entry of this Consent Judgment as would otherwise be available under the Federal Rules of Appellate Procedure, Rule 4(a)(1).

7. A "default" under this Consent Judgment means the failure by Pacific Empire to make payments to ASCAP in accordance with this Agreement, the 2010 License, any other ASCAP license agreement, and/or the failure of a check made payable to ASCAP by Pacific Empire to clear for payment. Pacific Empire shall be responsible for all bank fees and penalties that result from such default, in addition to the Judgment Amount plus interest due and payable, pursuant to this Agreement. If ASCAP is required to give Pacific Empire notice of default on more than two (2) occasions, regardless of whether each default is cured, ASCAP may immediately and without further notice seek enforcement of this Consent Judgment as provided above, and Pacific Empire agrees to

pay to ASCAP all of ASCAP's reasonable attorneys' fees and costs incurred in connection with the enforcement of this Consent Judgment (including, without limitation, fees and costs associated with any briefings or hearings required by any Court).

8. Pacific Empire will promptly give notice to ASCAP of any contract for the sale or transfer of any of the Stations or any ownership interest in the Stations, directly or indirectly. Said notice shall include furnishing ASCAP with a complete copy of the contract for sale or transfer, the name and address of the buyers, the terms of the sale or transfer, and the closing date of the sale or transfer. In advance of any such sale or transfer, Pacific Empire will cause arrangements to be made for the full payment to ASCAP of all amounts due and owing to ASCAP pursuant to this Consent Judgment and the Stations' ASCAP license agreements (the "Assignment Amount"), not later than the closing date of such sale or transfer. Such arrangements shall specifically include, and not be limited to, Pacific Empire notifying the prospective purchaser or transferor of Pacific Empire's obligations under this paragraph, and further, Pacific Empire, the buyer and ASCAP entering into and executing an Agreement for the Assignment of Proceeds from such sale or transfer pursuant to which ASCAP shall be paid the Assignment Amount from the first payment made by the buyer at or before the closing of the intended sale or transfer. If Pacific Empire fails to place the purchaser/transferee on notice of their obligations to ASCAP, ASCAP may unilaterally place the purchaser/transferee on notice of the obligations set forth in this paragraph. If ASCAP is not provided with such an Assignment of Proceeds, ASCAP may at its discretion take all steps necessary to obtain full payment of any balance of the Judgment Amount plus interest owed to ASCAP as of the date that ASCAP becomes aware of such sale or transfer, and any other amounts then

due and owing to ASCAP, through means including, but not limited to, enforcement of this Consent Judgment.

9. Pacific Empire shall not willfully dissipate or encumber any of its assets in order to impair ASCAP's ability to collect the amounts due under this Consent Judgment.

10. Pacific Empire represents and warrants that it has provided full financial disclosure to ASCAP; that at the time of the execution of this Consent Judgment Pacific Empire is not insolvent; and that the payments of the Judgment Amount made in accordance with the Payment Schedule shall not be subject to a preference or avoidance claim under Section 547 of the U.S. Bankruptcy Code. In the event that ASCAP is required to refund all or any portion of the Judgment Amount pursuant to a preference action, this Agreement and all releases provided for herein shall be null and void as to any party whose insolvency prompted the preference action, and ASCAP shall be entitled to pursue all remedies to collect the full amount of any balances owed and any other amounts due and owing to ASCAP pursuant to the ASCAP Licenses for the Stations from the party whose insolvency prompted the preference action.

11. The Clerk of Court shall not close this case.

Dated: June 13, 2013
New York, New York

Thomas L. Loeffler
United States District Judge

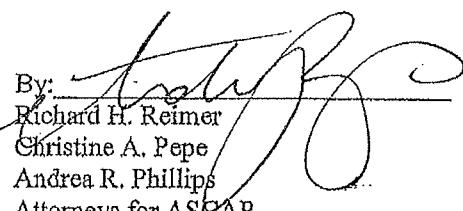
JN

We consent to the entry of the foregoing Consent Judgment:

Dated:

6/13/13

AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND
PUBLISHERS

By: 
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Dated:

5/12/13

PACIFIC EMPIRE RADIO
CORPORATION

By:

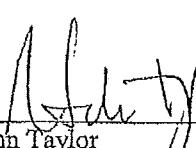

R. John Taylor
Chairman of the Board of Directors
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Lewiston, Idaho 83501
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Exhibit A

Consent Judgment Payment Schedule

Pacific Empire Radio Corporation

(KMGI-FM, KATW-FM, KSEI-AM, KCLK-AM, KCLK-FM, KVAB-FM, KBKR-AM, KLBM-AM, KRJT-FM, KUBQ-FM, KKBC-FM & KQZB-FM)

Settlement Amount (Principal): \$218,005.38 (through May 31, 2013)

Balance Owed on Principal	Payment Date	Monthly Installment Payment Toward Principal	Balance After Payment to Principal	Interest @ 9% per annum*
\$218,005.38	Initial Payment	\$32,700.80	\$185,304.58	\$1,389.78
\$185,304.58	July 31, 2013	\$18,047.62	\$169,256.96	\$1,268.43
\$169,256.96	August 31, 2013	\$3,526.19	\$165,730.77	\$1,242.98
\$165,730.77	September 30, 2013	\$3,526.19	\$162,204.58	\$1,218.63
\$162,204.58	October 31, 2013	\$3,526.19	\$158,678.39	\$1,190.09
\$158,678.39	November 30, 2013	\$3,526.19	\$155,152.20	\$1,163.64
\$155,152.20	December 31, 2013	\$3,526.19	\$151,626.01	\$1,137.20
\$151,626.01	January 31, 2014	\$3,526.19	\$148,099.82	\$1,110.75
\$148,099.82	February 28, 2014	\$3,526.19	\$144,573.63	\$1,084.30
\$144,573.63	March 31, 2014	\$3,526.19	\$141,047.44	\$1,057.88
\$141,047.44	April 30, 2014	\$3,526.19	\$137,521.25	\$1,031.41
\$137,521.25	May 31, 2014	\$3,526.19	\$133,995.06	\$1,004.98
\$133,995.06	June 30, 2014	\$3,526.19	\$130,468.87	\$978.52
\$130,468.87	July 31, 2014	\$3,526.19	\$126,942.68	\$952.07
\$126,942.68	August 31, 2014	\$3,526.19	\$123,416.49	\$926.62
\$123,416.49	September 30, 2014	\$3,526.19	\$119,890.30	\$899.18
\$119,890.30	October 31, 2014	\$3,526.19	\$116,364.11	\$872.73
\$116,364.11	November 30, 2014	\$3,526.19	\$112,837.92	\$846.28
\$112,837.92	December 31, 2014	\$3,526.19	\$109,311.73	\$819.84
\$109,311.73	January 31, 2015	\$3,526.19	\$105,785.54	\$793.39
\$105,785.54	February 28, 2015	\$3,526.19	\$102,259.35	\$766.95
\$102,259.35	March 31, 2015	\$3,526.19	\$98,733.16	\$740.50
\$98,733.16	April 30, 2015	\$3,526.19	\$95,206.97	\$714.05
\$95,206.97	May 31, 2015	\$3,526.19	\$91,680.78	\$687.61
\$91,680.78	June 30, 2015	\$3,526.19	\$88,154.59	\$661.16
\$88,154.59	July 31, 2015	\$3,526.19	\$84,628.40	\$634.71
\$84,628.40	August 31, 2015	\$3,526.19	\$81,102.21	\$608.27
\$81,102.21	September 30, 2015	\$3,526.19	\$77,576.02	\$581.82
\$77,576.02	October 31, 2015	\$3,526.19	\$74,049.83	\$555.37
\$74,049.83	November 30, 2015	\$3,526.19	\$70,523.64	\$528.93
\$70,523.64	December 31, 2015	\$3,526.19	\$66,997.46	\$502.48
\$66,997.45	January 31, 2016	\$3,526.19	\$63,471.26	\$476.03
\$63,471.26	February 29, 2016	\$3,526.19	\$59,945.07	\$449.59
\$59,945.07	March 31, 2016	\$3,526.19	\$56,418.88	\$423.14
\$56,418.88	April 30, 2016	\$3,526.19	\$52,892.69	\$398.70
\$52,892.69	May 31, 2016	\$3,526.19	\$49,366.50	\$370.25
\$49,366.50	June 30, 2016	\$3,526.19	\$45,840.31	\$343.80
\$45,840.31	July 31, 2016	\$3,526.19	\$42,314.12	\$317.38
\$42,314.12	August 31, 2016	\$3,526.19	\$38,787.93	\$290.91
\$38,787.93	September 30, 2016	\$3,526.19	\$35,261.74	\$264.46
\$35,261.74	October 31, 2016	\$3,526.19	\$31,735.55	\$238.02
\$31,735.55	November 30, 2016	\$3,526.19	\$28,209.36	\$211.57
\$28,209.36	December 31, 2016	\$3,526.19	\$24,683.17	\$185.12
\$24,683.17	January 31, 2017	\$3,526.19	\$21,156.98	\$158.68
\$21,156.98	February 28, 2017	\$3,526.19	\$17,630.79	\$132.23
\$17,630.79	March 31, 2017	\$3,526.19	\$14,104.60	\$105.78
\$14,104.60	April 30, 2017	\$3,526.19	\$10,578.41	\$79.34
\$10,578.41	May 31, 2017	\$3,526.19	\$7,052.22	\$52.88
\$7,052.22	June 30, 2017	\$3,526.19	\$3,626.03	\$26.45
\$3,626.03	July 31, 2017	\$3,526.03	(\$0.00)	\$30,427.92

* Interest amount on Balance Owed after payment towards Principal; monthly interest rate is simple interest at 0.0075%.

** If Pacific "defaults" on the terms of the Consent Judgment and this Payment Schedule at any time, \$30,427.92 in accrued interest becomes due as of August 1, 2016 – payable in four (4) installments of \$7,608.98 on August 31st, September 30th, October 31st and November 30th of 2017.